

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
June 1, 2007 Session

**PERRY LEE WOODS v. ROSE MARY WOODS**

**Appeal from the Chancery Court for Sumner County**  
**No. 2004D-317     Tom E. Gray, Chancellor**

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**No. M2006-01000-COA-R3-CV - Filed on July 26, 2007**

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In this divorce action, Husband appeals the division of the marital estate and the amount and duration of Wife's rehabilitative alimony award. Finding no error below, we affirm the judgment of the trial court in all respects.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and ROBERT W. WEDEMEYER, J., joined.

Umeka Foreman, Nashville, Tennessee, for the appellant, Perry Lee Woods.

Robert G. Ingram, Gallatin, Tennessee; Thomas F. Bloom, Nashville, Tennessee, for the appellee, Rose Mary Woods.

**OPINION**

This appeal concerns the termination of a twenty-three year marriage. Mr. Perry Lee Woods and Mrs. Rose Mary Woods were married in November 1983, at which time Mr. Woods was 30 years old and Mrs. Woods was 34 years old. After the marriage, both parties accepted employment with General Electric, Inc. (GE). In 1985, Mr. Woods left GE and accepted employment with Nissan. Mrs. Woods, however, continued her employment with GE until 1999, at which time she began working for the Gap.

On July 13, 2004, Mr. Woods filed a complaint for divorce, alleging inappropriate marital conduct and irreconcilable differences. Mrs. Woods filed an answer and counter-complaint on August 19, 2004, denying that Mr. Woods was entitled to a divorce on the grounds of inappropriate marital conduct and alleging instead that Mr. Woods had engaged in inappropriate marital conduct and adultery. At the time of divorce, Mrs. Woods earned \$19,309.68 per year while Mr. Woods averaged \$63,316.00 per year.

On March 21, 2006, the court filed a memorandum ruling which granted Mrs. Woods a divorce based on Mr. Woods' inappropriate marital conduct. The court awarded Mrs. Woods rehabilitative alimony in the amount of \$850.00 per month for 120 months, ordered that Mr. Woods designate Mrs. Woods as beneficiary of his life insurance policy in order to secure the alimony obligation, and awarded Mrs. Woods reasonable attorney's fees. The court also awarded Mrs. Woods the entirety of any recovery which she may obtain as a result of a pending class action lawsuit against her former employer, GE.

Mr. Woods appeals and asserts that the trial court erred in (1) awarding Mrs. Woods the entirety of her potential award in the class action suit against GE; (2) ordering that he designate Mrs. Woods as beneficiary of his life insurance policy; and (3) awarding Mrs. Woods \$850.00 in rehabilitative alimony. Mrs. Woods seeks her attorney's fees incurred in defending the appeal.

### **I. STANDARD OF REVIEW**

Pursuant to Tenn. R. App. P. 13(d), "review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." However, a trial court's conclusions of law are not afforded such a presumption. *Kendrick v. Shoemaker*, 90 S.W.3d 566, 569 (Tenn. 2002). When the trial court fails to make findings of fact, there is no presumption of correctness, and the appellate court must conduct an independent review of the record to determine where the preponderance of the evidence lies. *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999).

### **II. DIVISION OF MARITAL ESTATE**

Mr. Woods first argues that the trial court erred in the division of the marital estate by awarding Mrs. Woods the entirety of her potential class action award and by requiring that Mr. Woods designate Mrs. Woods as beneficiary of his life insurance policy. Mr. Woods contends that the trial court abused its discretion by failing to make any written findings of fact regarding such division. Although Tenn. Code Ann. § 36-4-121(c) requires that the trial court "consider all relevant factors" in making an equitable distribution of marital property, the statute does not mandate that the court make written findings of fact.

We have uniformly held in a similarly organized domestic statute, Tenn. Code Ann. § 36-6-106(a), that while it is helpful to a reviewing court if the trial court discusses each of the applicable statutory factors and how those factors impacted its ruling, we will not alter the trial court's decision simply because the trial court failed to do so. See *Harless v. Harless*, No. E2006-00192-COA-R3-CV, 2007 WL 906757, at \*6 (Tenn. Ct. App. Mar. 26, 2007); *Bell v. Bell*, No. W2004-00131-COA-R3-CV, 2005 WL 415683, at \*5 (Tenn. Ct. App. Feb. 22, 2005); *Burnett v. Burnett*, No. E2002-01614-COA-R3-CV, 2003 WL 21782290, at \*6 (Tenn. Ct. App. Jul. 23, 2003). Said the court:

[T]he trial court was obligated to consider the applicable statutory factors in Section 36-6-106(a) in reaching its decision regarding the comparative fitness of the parties. *See Burnette v. Burnette*, E2002-01614-COA-R3-CV, 2003 WL 21782290, at \*6 (Tenn. Ct. App. July 23, 2003). “However, the statute does not require a trial court, when issuing a memorandum opinion or final judgment, to list every applicable factor along with its conclusion as to how that particular factor impacted the overall custody determination.” *Id.* Moreover, not every factor is applicable in a given case, and the trial judge is required to consider only the factors which are applicable. *Id.*; *see also Mueller v. Mueller*, W2004-00482-COA-R3-CV, 2004 WL 2609197, at \*6 (Tenn. Ct. App. Nov. 17, 2004).

*Bell*, 2005 WL 415683, at \*5.

We find the reasoning in this case applicable to Tenn. Code Ann. § 36-4-121, and therefore find no merit in Mr. Woods’ first and second assignments of error. Additionally, applying the relevant factors to the facts in the record before us, we cannot conclude that the trial court’s distribution of the marital estate was inequitable.

### III. ALIMONY

Mr. Woods also contends that the amount and duration of alimony awarded to Mrs. Woods exceeds her need as well as his ability to pay. In determining whether an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length, and manner of payment, the trial court must consider all relevant factors including those provided in Tenn. Code Ann. § 36-5-121(i).<sup>1</sup> However, the two most important factors are the demonstrated

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<sup>1</sup> Tenn. Code Ann. § 36-5-121(i) provides:

i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
- (3) The duration of the marriage;
- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;

(continued...)

need of the spouse seeking support and the obligor spouse's ability to pay. *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995). Since support decisions are factually driven and largely dependent on balancing numerous factors, we afford wide latitude to the trial court's discretion. *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001).

In this case, the evidence adduced at trial clearly supported the trial court's award. This was a marriage of long duration in which the court allocated fault for the demise of the marriage to Mr. Woods. The evidence also reflected that Mr. Woods has the capacity to earn almost three times as much as Mrs. Woods and that Mrs. Woods' earning capacity is diminished due to poor health. Furthermore, the essentially equal division of the marital assets did not redress the clear economic disparity between the parties. Mr. Woods' argument that he does not have the ability to pay \$850.00 per month in rehabilitative alimony is completely unsupported since Mr. Woods failed to include his statement of income and expenses in the record. We, however, find that Mrs. Woods' statement of income and expenses, which is unchallenged by Mr. Woods on appeal, shows a deficit of \$1,411 per month and, thus, clearly demonstrates the need for rehabilitative support.

#### IV. CONCLUSION

Mrs. Woods requests an award of her attorney's fees for this appeal. Exercising our discretion, *see Archer v. Archer*, 907 S.W.2d 412, 419 (Tenn. Ct. App. 1995), we decline this request and hold that each party should be responsible for paying his or her own attorney's fees. The judgment of the trial court is affirmed in all respects. The costs of appeal are assessed against Appellant, Mr. Woods.

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PATRICIA J. COTTRELL, JUDGE

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<sup>1</sup>(...continued)

(7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property, as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.